S.B. CIVIL WRIT PETITION No.2606/1997
LAMBA GRAM SEWA SAHAKARIA SAMITI Ltd. V/s
STATE OF RAJ. & OTHERS.

5.1.2007

HON'BLE MR. JUSTICE MOHAMMAD RAFIQ

Ms Poornima Sharma for the petitioner.
Shri Ashok Pareek for the respondents.

REPORTABLE

Heard learned counsel for the parties.

The petitioner in this writ petition has challenged the order passed by the Revisional Authority dated 18.2.97 under section 128 of the Rajasthan Co-operative Societies Act, 1965. The said revisional authority has set aside the recovery proceedings against the respondent No.4 on the ground that such proceedings were initiated after expiry of the limitation of six years as provided in proviso to section 74(1) of the Act, 1965. The view taken by the revisional authority that the notice was issued to the respondent No.4 on 20.5.94 with regard to purchase of the

material made on 20.6.84 for construction of godown by the petitioner. Obviously, the proceedings were initiated after 10 years. For correct appreciation of section 74(1), it would be apposite to reproduce section 74 (1) which is as follows :

> **"74.Surcharge.**- (1)If in the course of an audit, inquiry, inspection or the winding up of a co-operative society, it is found that any person, who has taken any part in the organisation or management of such society or who is or has at any time been an officer or an employee of the society, has made any payment contrary to this Act, the rules or the bye-laws or has caused any deficiency in the assets of the society by breach of trust or willful negligence or has misappropriated or fraudulently retained any money or other property belonging to such society, the Registrar may, of his own motion or on the application of the committee, liquidator or any creditor, inquire himself or direct any person authorised by him by an order in writing in this behalf, to inquire into the conduct of such person :

> Provided that no such inquiry shall be held after the expiry of six years from the date of any act or omission referred to in this sub-section or as the case may be, from the date of knowledge of the Registrar of such act or omission, whichever is later."

It should be clear from the proviso referred to above that no such inquiry shall be held after the expiry of six years from the date of any act or omission referred to in this sub-section or as the case may be, from the date of knowledge of the Registrar of such act or omission, whichever is later. The period of limitation therefore cannot be counted only only from the date the event in relation to which the recovery has to be made. Although the petitioner has specifically asserted in para 5 of the writ petition that the act or omission with reference to which recovery is sought to be made from the respondent No.4

came to light with the audit report submitted on 30.6.88, but the respondents have not denied this fact in their reply to the writ petition.

The present case would therefore fall in the later category according to which such period is to be counted from the date of knowledge of the Registrar of such act or omission. It is, therefore, that the legislative has purposely by amending proviso to sub-section (1) to section 74 by Act No.2 of 1991 w.e.f. 27.3.91 sought to cover the category of cases which cannot be immediately discovered and do not come to surface within the period of six years from the date of act or omission in relation to which the recovery is to be made.

The order passed by the revisional authority is accordingly set aside and the matter is remanded back for decision afresh on merits. The revisional authority after

receipt of the certified copy of this order may consider and decide the revision petition within six months.

(MOHAMMAD RAFIQ),J.

CHAUHAN/